

TALKING POINTS: HB 198  
By: Lund Law, PLLC (1/27/2011)

- 1. HB 198 Does Change the Law** – Supporters of HB 198 have stated that this bill simply clarifies status quo. This is not true. There has never been a law in Montana to allow a private entity to condemn property to send electricity to customers in a foreign country. At one time the law allowed the Montana Power Company to condemn property to serve Montana citizens.
- 2. HB 198 Violates Due Process Rights** – Both the Montana and United States Constitutions provide due process protections for private property rights. This bill would violate those due process rights because landowners would not be provided actual notice prior to their property being targeted for condemnation in the MFSA process.
- 3. MFSA Does Not Provide Adequate Constitutional Protection for Private Property** – HB 198 would eviscerate the current constitutional protections for private property. Currently without HB 198, the State, or an entity granted condemnation authority by the Legislature, cannot take property unless the use is a public use, and the condemnor proves that public use in Court. MFSA was not written to and does not provide protection for private property owners.
- 4. Retroactive Section of HB 198 is Unconstitutional** – The last section of the bill would make the law retroactive so that any entity that received a MFSA certificate since September 30 of 2008, can now condemn property. This would violate landowners' due process and constitutionally-protected private property rights.

#### 4. **Not Fair to Rural Landowners –**

- In 2007 the Legislature protected urban landowners from condemnation for business development in reaction to the *Kelo* case. Many Republicans ran on the issue of making sure that *Kelo* could not happen in Montana. Now, this bill would allow condemnation of rural landowners land.
- Unfair to landowners to allow another business to convert the rancher/farmer's property to another business's use. Why can't a rancher take the neighbor's property to expand his ranch?
- MATL, an out-of-state-out-of-country corporate entity would be able to condemn a Montana landowner's property to put up an energy transmission line that would not provide a public benefit. The line is not needed. There are already several lines running in the vicinity of this line – MATL just does not want to pay tolls on those lines.
- MATL needs to act fast because it has been awarded more than \$160 million in “stimulus funds,” by the United States to build this project, and there are timelines within which they need to spend the money. Why should Montana farmers be steamrolled so MATL can do business?
- Montana farmers and ranchers are more important to Montana's economy than this small transmission line could ever be.
- This is not a well thought out approach and would result in numerous unintended consequences.
- The legislature should first do no harm and taking property from one business to give it to another business would do great harm to our current constitutional government protecting private property.